Lewis County Planning Commission

Public Meeting

Lewis County Courthouse
Commissioners' Hearing Room – 2nd Floor
351 NW North St – Chehalis, WA

January 27, 2015 - Meeting Notes

Planning Commissioners Present: Russ Prior, District 3; Bob Guenther, District 3; Mike Mahoney, District 1; Richard Tausch, District 2; Leslie Myers, District 1
Planning Commissioners Excused: Sue Rosbach, District 2
Staff Present: Lee Napier, Glenn Carter, Patrick Babineau, Pat Anderson
Others Present: Please see sign in sheet

Handouts/Materials Used:

- Agenda
- Meeting Notes from January 13, 2015
- Memo: Local Impacts Group Recommendations
- Planning Commission Schedule for 2015

1. Call to Order
Chair Mahoney called the meeting to order at 6:05 p.m. The Commissioners introduced themselves.

2. Approval of Agenda
There were no changes to the agenda and so approved.

3. Approval of Meeting Notes
There were no changes to the meeting notes of January 13, 2015 and so approved.

4. New Business
There was no new business.

5. Old Business

A. Workshop on Recreational Marijuana Land Use

Chair Mahoney stated the public hearing on this topic was held on January 13 where testimony was taken and written testimony was accepted until Tuesday, January 20 at 4:00 p.m. The public hearing is officially closed and tonight's workshop will be to finalize a recommendation to the Board of County Commissioners (BOCC). Chair Mahoney recognized Ms. Napier.

Ms. Napier, Director of Community Development, stated some additional material was distributed to the Planning Commissioners and was also available for the public. At the Planning Commission's and Ms. Napier's recommendation two internal department reviews have been held on the proposed code. The group's comments are summarized in the memo, as well as a recommendation. The group concurred that the current supplemental code for Lewis County development standards, and the Washington Administrative Code (WAC) that are administered by the Liquor Control Board (LQB), are

inadequate for purposes of their regulatory. They would like to explore and support what the Planning Commission is doing with drafting land use codes. There was quite a bit of conversation about the review and extensive list of guidance documents that were prepared by the LQB related to Initiative 502 and the adopted rules. It is important to think about the role of the LQB and the role of the local regulatory authorities in Lewis County. The LQB had the goal of developing a tightly regulated and controlled market so they are looking at the supply and demand of this industry. They had concerns about the transport of the product; they did not spend the time – nor is it the purpose of the WAC – to look at the environmental concerns or community impacts. That authority is left to local governments. The LQB does not have the authority to dictate what kind of zoning is in place. In Ms. Napier's recommendations there are some related to liquid and solid wastes. That is also something that the LQB has no authority to regulate in Lewis County. Their purpose is to ensure that people are qualified to have these types of licenses, as well as the reporting requirements.

Ms. Napier offered to review the comments or focus on the recommendations, depending on what the Planning Commission would like.

Chair Mahoney referred to the comments regarding waste from a processor. He stated that as a dairyman he is used to having DOE and Department of Agriculture fighting over who gets to regulate him the most, but all of his liquid and solid wastes from any animal operation are under the control of the Department of Agriculture. He asked why marijuana production would be any different. Ms. Napier stated that to her knowledge that has not been delegated to anybody; it lies within the WACs provided to the LQB and not delegated to any state agency. Biosolids are regulated by one state entity and that entity has state-wide control. In speaking with Environmental Health staff, who often receives the calls from concerned citizens, they would like to see some local control. In the case of Group B water systems and other types of regulations they have the ability through Title 8 – not related to the Planning Commission – to adopt the same WACs or similar WACs that have been prepared for LQB and for their code. That would provide local regulatory authority for that topic.

Mr. Carter stated he understands that the Department of Agriculture has specifically declined jurisdiction with respect to marijuana operations.

Commissioner Prior asked if DOE has weighed in at all. Ms. Napier stated she has heard from Lewis County Environmental Health staff that they have met with DOE staff and DOE is not going to be regulating this activity. It will likely fall to local governments.

Commissioner Guenther stated he personally has had issues with DOE; he could hardly live in his home at times because of the way biosolids were being managed by DOE. We have to have local jurisdiction control on any waste that is delivered to this county and how it is taken care of. Lewis County has wells that are in jeopardy; surface water is draining into the Newaukum River. We must have local control.

Commissioner Prior stated he is basically in favor of allowing people to grow and process marijuana under state law and the recommendations from the departments strike him as a local opportunity for not allowing this industry. The issue about adequacy of water and requiring people to turn their domestic exempt wells into a public water system seems onerous to him and he is not sure it is needed. He doesn't know anything about the kinds of waste that are generated by this business, or the water quantities that are needed, but Commissioner Prior thought that someone who had an exempt well who

can legally use 5000 gallons per day or irrigate half an acre with their well would have enough water. He did not see that the water quantity issue is valid. With respect to water quality and ground water contamination, he knows a lot about that, and he would need to know some specifics about what kinds of wastes are generated and what kind of chemicals are used.

Ms. Napier spoke to an exempt well having adequate water. If someone wanted to establish a commercial use on his property an exempt well is likely not adequate regardless of the industry. We have tried to be clearer to folks through our regulations and not wait until they have invested or until they have started the process to let them know that now they need to have a Group B system or a Group A system. Commissioner Prior stated the exempt well allows everyone in Lewis County to pump 5000 gallons per day, and based on the sizes of the grow operations, he could not imagine that they would be using more water than that. Ms. Napier stated there are other triggers that are not within our purview of regulation. There are things that are governed by Public Health and Social Services. They are letting us know is that if we adopt these codes there are other implications. We have tried to assemble ourselves in a group to let people know if we adopt a code, what other triggers does the customer need to be concerned about. The likelihood that they will have to have a Group B system is possible. There have been recent changes to our Group B code where we are now regulating them.

Commissioner Prior asked if that was local jurisdiction for Group B systems. Ms. Napier stated the state no longer wants to regulate Group B systems; the county has assumed that responsibility. Commissioner Prior stated he would like to review the regulations for Group B systems. Ms. Napier stated they are in County Code, Title 8.

Chair Mahoney asked if Ms. Napier was talking about water for processors, not producers. Ms. Napier stated production and processing could likely be subject to the Group B systems; that is not our call. Chair Mahoney stated if you are talking about production, you are talking about irrigation water. Ms. Napier stated she was not talking about irrigation. Commissioner Prior is using the example of exempt wells for irrigation purposes in his view of why a public water system would not be required. Ms. Napier contends through her conversation with the County Department of Health that there are other circumstances in which there would be a trigger. Chair Mahoney stated it would not be in the growing of marijuana but in the processing of marijuana. Ms. Napier stated depending on how the commercial operation is set up you could reach a trigger; it is not necessarily the crop but the composition of your commercial operation.

Mr. Carter stated his understanding is not the quantity of water that is needed to water the plants that triggers the Group B. It is the fact that there are employees and a commercial operation. Those employees will use the water for purposes of potable water.

Chair Mahoney stated a lot of the questions, including the liquid and solid waste questions, really have nothing to do with the land use rules and regulations that the Planning Commission has been discussing for the last few months. These are something that Department of Health or other county agency is going to be dealing with. While he has no problem with passing on the recommendations, he does not know that it is something that the Planning Commission needs to deal with. Ms. Napier stated these are additional development standards that should be referenced in your code to help guide the applicant. When we are preparing code, we want the product to be useable to the customer. She also thinks it is important that as we write code we do not write code that has unintended consequences to another

department; hence, the reason for the internal review. The internal review is asking: if you do this, will it trigger a responsibility for her that will require an amendment to her code. It is not uncommon for one department to write code that triggers another department to amend its code. What may be unusual is that Ms. Napier is bringing this to the front so the Planning Commission is aware of its actions and how they affect another department.

Chair Mahoney stated from the Planning Commission's standpoint, its recommendation would be to defer to the other agencies that are involved. One concern through this process has been the extra burden on the Sheriff's Department, as well as the extra burden on the Community Development Department. If we are looking at land use regulations, the setbacks, the security requirements, none of that really affects anything in this memo. Ms. Napier stated in the memo the departments are making recommendations to your code, so yes, there should be some additional language in your recommendation if you wish to incorporate those comments. It doesn't mean that you need to amend any other code – you are not responsible for amendments to Title 8. You are recognizing that there is work that needs to be done to make your actions solidify with the regulatory actions of another department.

Commissioner Guenther stated what was discussed tonight does affect what the Planning Commission needs to do.

Chair Mahoney stated there were a couple of people who testified about the 100' setback for security cameras, lighting, etc., and asked what the other Commissioners thought about that setback: should it be left alone or made smaller. Commissioner Prior stated one person testified about the 100' setback and how it would affect his friend. Commissioner Prior would have preferred to hear the argument from the friend. With regard to that, given that he is on the road and he is a quarter of a mile from any neighbor, couldn't he apply for a variance? Would the county be amenable to that?

Ms. Napier stated typically variances are not from development standards. She was reading County Code and there is a section under variances where the person could go to the hearing examiner and request a variance from the provisions of Title 17. They would have to show the circumstances that the variance should be granted – it is not a special privilege. There are some special circumstances applicable to the property, such as size, shape, topography, that make it unique and that granting the variance would not be detrimental to the public welfare. Typically setbacks are side yard or rear yard setbacks, so it would be different from the front yard setback that the county currently has, and that is the Public Works exception. This would not be a Public Works exception; this would go to the hearing examiner.

Commissioner Prior stated the [proposed code amendment] requires a minimum of five acres. Looking back at the previous deliberations, he was trying to find the right word – it is a fractional equivalent of a section. He would like to change the wording from five acres. If someone has 1/128th of a section, that is 5 acres. What if he has 4.89 acres, just because of the way the section lines are drawn? Not all sections are 640 acres. He asked if an "aliquot" of a section is the right word. Ms. Napier stated this conversation occurred when Title 16 was amended. The provision of 1/100th is coming from a different section of code and is not part of Title 17.

Chairman Mahoney asked if there was a proper legal terminology that the Commission should be using. Ms. Napier stated the division of land where you can have 1/32nd of a section, or 1/8th of a section – an aliquot – is for purposes of division of land to determine if someone is exempt from a subdivision. It is a different application of code from what Commissioner Prior is describing. It was Ms. Napier's understanding that the five acre lot size was the development standard and applies to everyone who is not in Small Town Industrial or Rural Industrial Area. The minimum lot size for rural lands starts at 5 acres. Commissioner Prior stated that some of those are not truly 5 acres; some are less. He would not like to have a situation where five acres is required and if someone has 4.99 that is not good enough. Ms. Napier stated if a smaller lot size is allowed then make sure setbacks are considered. Don't create a situation where the applicant can't meet the other development standards.

Commissioner Prior stated he would like the code to say 1/128th of a section rather than 5 acres. If the section is less than 640 acres then the 1/128th can be less than 5 acres. Chair Mahoney stated the purpose of going with the five acre minimum was recognizing there are some areas in unincorporated rural areas that have been broken up into small building lots and the Planning Commission wanted to exclude these activities just as it would exclude a dairy or chicken house on similar property.

After more discussion (Commissioner Guenther's statement was inaudible), Commissioner Prior acquiesced.

Chairman Mahoney stated that written comments were received from two people who were adamantly against licensing and marijuana usage in Lewis County.

Commissioner Prior referred to page 3 of the draft code amendments, 17.75.037. He thought there was an inconsistency between that and Table 1. Number 2 in 17.75.037 shows Type 1 marijuana processing; the Table indicates both Type 1 and Type 2 are okay in Small Town Industrial. Rural Area Industrial says Type 1 is allowed. He thought it should allow Type 2 also. He asked if these zones were the same.

Chairman Mahoney agreed that the text was incorrect; both Type 1 and Type 2 should be shown as allowed in Rural Area Industrial.

Ms. Napier stated this was patterned after the current table and RAI was not shown on that. She needed to research it to see where it is reflected in Table 1 or if it is separate.

Commissioner Prior referred to page 5, Supplemental Requirements, 17.145, number 5: outside lighting. He would like to see the word "lighting" after "security" in the first sentence. On page 6, 17.145.160, numbers 2 and 3 which states production and processing. Those should read "retailers." Ms. Napier stated those have been corrected. This section is for development standards for marijuana retailers.

Commissioner Prior stated that hospitals were being called out specifically (paragraph 3) but the code does not call out any other things that are already mandated by the LQB. He asked if that would be problematic about specifying only what the County is worried about. Ms. Napier stated that is something for the Planning Commission to consider. In this particular case the screening is done by LQB. An application comes in and as part of their application and licensing process they have a list that they screen. If you want the screening done by the LQB you can remain silent on that. LQB will likely do that

screening but maybe there is a change in their process. You could have it put into your code and memorialize it. Regardless of what LQB does for their buffering, this is the buffering that you want.

Chairman Mahoney stated some time back there was a discussion about adopting the WAC into the county code, or referring to it, so that all of the security requirements, setbacks, everything laid out in the WAC would be where the county starts and add to it. How do we accomplish that?

Commissioner Prior recommended that number 3 have a clause right up front that says "in addition to buffer requirements stated in WAC 314.55….." and then list the requirements already in number 3. Ms. Napier asked if he only wanted that added for retailers, not producers or processors. Commissioner Prior does not want county code to state something that we want specific to Lewis County and people think Lewis County will be easy because only the hospitals are mentioned.

Chair Mahoney stated his understanding was that everything the Planning Commission did would be on top of WAC requirements: adopt the WAC in its entirety and add a few specific things for Lewis County. It has been suggested if it is incorporated into Lewis County ordinance then local law enforcement can enforce it within the county. If it is just in the WAC they don't enforce it – it would be up to the LQB people to enforce. He would like local law enforcement to have the authority to do something if a business is out of compliance.

Mr. Carter stated the WACs provide the penalty of the loss of the state license. That is not something we can impose as a penalty for a violation of a county ordinance. If we wanted to adopt those standards in the WACS we would have to rewrite them to have to have our own county sanction. It might be the loss of the county business license; it might be a fine. We can't cut and paste those particular WAC provisions and put them under a code number. They would have to be changed in wording to provide for a county sanction other than the loss of the state license, over which we have no control.

Commissioner Prior stated that based on what Mr. Carter just said, the Planning Commission doesn't have to worry about the fact that our code only states hospitals. Mr. Carter stated that is correct. What he believes to be the Sheriff's concern is the small number of inspectors and enforcement agents from the state. Even with a great state code it won't be enforced if you only have a few people. The idea of taking those and making those county standards is to enable the Sheriff's office to actually enforce them as county violations, where the county would have the manpower to do so.

Chair Mahoney stated the county would have to reproduce in its ordinance the part of the WAC that refers to the 1000 foot setbacks for playgrounds, schools, etc., for permitting purposes. Commissioner Prior stated that is not what he proposed. He was asking if we need to. Chair Mahoney stated from what he was hearing if we want to enforce that as part of the business license and building permit process it must be written into our ordinance, we can't just refer to the WAC.

Ms. Napier stated if there is a concern about the LQB enforcing it and you want local control, then yes. Chair Mahoney stated from a permitting and licensing view, we want that local control.

Mr. Carter stated, with respect to the 1000 feet, a permit application comes in to Community Development and that is conditioned on the fact that the person is in compliance with the state requirements. They have to show that they have a state license; they have to be in compliance with the

1000 foot requirement, not with respect to the hospital – Lewis County is adding that. If it comes in to the office and it is found that it is 900 feet from the closest church or playground then a mistake has occurred and the mistake will be raised with the state licensing board and that it does not qualify. That requirement does not have to be written into Lewis County code because there is going to be a gatekeeper through Community Development who says that applicant can't proceed any further because it doesn't meet the requirement for a state license. What Mr. Carter is concerned about, and what the Sheriff's Department is concerned about, is what happens after that process – where a violation of a WAC occurs on an on-going operation of a facility. Someone from the state is not going to come down and enforce, inspect, and do what needs to be done. That is when we want some of those operational requirements within our own code to say that improper waste disposal is a violation of a county ordinance. That is cited under county ordinance and can be enforced because we have the manpower and process to do it. The 1000 feet is a requirement for the person to get a license.

Chairman Mahoney stated the state has issued licenses and people are asking when they can open their business in Lewis County. They can't activate that license in Lewis County until their property and structures meet our county ordinances. Mr. Carter stated that could be addressed the way Commissioner Prior suggested: "subject to compliance with WAC 314.55….." That would work in that instance to incorporate those requirements that otherwise are not the ongoing operational requirements.

Chairman Mahoney asked if that fell within the recommendations in Ms. Napier's memo in making sure the Planning Commission's recommendation did not complicate the other departments. Ms. Napier stated staff tried to separate the licensing. The control of the market goes to LQB; the operation, once an applicant has a license from LQB, he or she goes to Community Development for permitting and regulatory. We need to make sure that the operational piece offers good guidance for people.

Chair Mahoney stated the next meeting will be the final meeting on recreational marijuana. At that point the Commissioners would be looking at a Letter of Transmittal and the language to recommend. He asked if that was correct. Ms. Napier stated she was taking notes on the language changes and those will be brought back to the Commission. If the language is what the Commission wants then a recommendation can be made to the Board of County Commissioners.

The Chair asked for any other comments. Commissioner Guenther stated he has listened to the testimony from the public and the Sheriff. From the beginning he has said the grows should be in an industrial setting. The county would be better served to locate the grows and processing in an industrial park for the safety and well-being of the county. Information that was received tonight further backs that up – it illustrates the need for tighter controls. He was not saying marijuana should not be grown in Lewis County but with the LQB having one or two people controlling it in the state, and his experience with DOE, he does not think it will be controlled. We will end up spending a lot of money policing a bunch of grows in a county that is 100 miles long and 25 miles wide.

Commissioner Tausch stated that this is conditioned on the Board of County Commissioners legalizing marijuana in Lewis County. He also understands it is conditioned on the applicant getting a business license, which means the license is conditioned on being in agreement with federal law. It must be signed off by the US Attorney General's Office. It comes back to all of this fine-tuning that the Planning

Commission is doing, and is it really going to happen. His feeling is if and when it does happen it will still require subsequent fine tuning. We could deliberate this to death.

Chair Mahoney stated there were a couple of comments against the use of the Special Use Permit. The Planning Commission has decided that most of these activities will require a Special Use Permit. A couple people stated it was another hurdle for them to overcome. His personal feeling was it was appropriate that there are a couple of additional hurdles. He would like Ms. Napier's opinion on the Special Use Permit for these activities as outlined in the document the Commission has been working with.

Ms. Napier stated yes, having a Special Use Permit is in line with other parts of the County Code for commercial activities. That is the provision that encourages the public process. She doesn't know of another option that exists; an administrative review would be a little bit of an exception. Chairman Mahoney liked that approach but there were two or three people who testified that it was a burden.

Commissioner Prior stated he originally objected to the Special Use Permit but he was convinced that it falls in line with other previously existing code.

Chairman Mahoney asked Ms. Napier if she had what she needed to come up with a Letter of Transmittal and the recommendations. Ms. Napier stated she has some suggested language changes from Commissioner Prior. She did not believe the Commissioners had addressed whether or not it wished to incorporate the recommendations from the staff memo, which would also add language to the supplement.

Chair Mahoney stated the only requirement from the Planning Commission is to incorporate it as part of the recommendation, and it recognizes the other agencies' concerns and the need to work together. He asked for a motion to that effect.

Commissioner Guenther made the motion; Commissioner Tausch seconded. The motion carried with Commissioners Guenther, Tausch, Mahoney and Myers voting yay; Commissioner Prior voting nay.

Ms. Napier stated for purposes of understanding the changes between two codes, a track change format will be used. Underlined text will indicate new next; deleted text will be a strike-through.

Chair Mahoney re-iterated that the Planning Commissioners agree and understand that the physical requirements, such as security, setbacks, etc. are part of the recommendation.

6. Calendar

The Planning Commissioners received a 2015 draft meeting schedule. Mr. Babineau went through the dates and topics and stated the schedule was subject to change. Some items may be dropped; others may be added as the year goes by. Items include marijuana land use regulations, open space applications, the Shoreline Master Program update, Countywide Planning Policies and population allocations, Comprehensive Plan work program, and SEPA Code update.

Chairman Mahoney suggested that the July and August meetings are consolidated to allow one meeting a month if possible. The dates for the public hearings for August 15 and 25th are not right; those dates

are only 10 days apart and should be 14. He was not sure enough time had been allocated for the Shoreline Master Program.

The next meeting will be on February 10, 2015.

7. Good of the Order
No one wished to speak.

8. Adjourn
The meeting adjourned at 7:17 p.m.